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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

GOLDEN DOOR PROPERTIES, LLC,  
Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
THE INTERIOR; DAVID L.  
BERNHARDT, in his official capacity  
as the Acting Secretary of the Interior;  
UNITED STATES FISH AND  
WILDLIFE SERVICE; and JAMES  
KURTH, in his official capacity as the  
Acting Director of the U.S. Fish and  
Wildlife Service,

Defendants.

Case No.: '19CV0193 GPC WVG

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF FOR  
VIOLATION OF FREEDOM OF  
INFORMATION ACT, 5 U.S.C. § 552**

## NATURE OF ACTION

1. Golden Door Properties, LLC (“Golden Door” or “Plaintiff”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief to enforce its right to federal agency records in the possession of Defendants United States Department of the Interior (“DOI”), David L. Bernhardt in his official capacity as the Acting Secretary of the Interior, United States Fish and Wildlife Service (“USFWS”), and James Kurth in his official capacity as the Acting Director of USFWS (collectively, “Defendants”). On June 22, 2018, the Golden Door sought records related to the Newland Sierra project, a large-scale development project located in San Diego County. Defendants violated FOIA by failing to properly respond to the Golden Door’s request within the statutorily prescribed time limits, failing to disclose the requested documents, and unlawfully withholding the requested information. At this time—more seven months after the Golden Door filed its requests—Defendants have not provided the requested information or fulfilled their legal obligations under FOIA. The Golden Door now asks the Court to order Defendants to respond to the requests and to disclose all responsive records improperly withheld.

## JURISDICTION & VENUE

2. This Court has jurisdiction over this action pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action as a federal question under 28 U.S.C. § 1331.

3. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

4. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e), which provide for venue in the district where the plaintiff resides.

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**PARTIES**

5. Plaintiff Golden Door is a California limited liability company with its principal place of business in San Diego County, California. The Golden Door is the owner and operator of a hospitality business that opened in 1958. Situated in rural northern San Diego County, its operation includes a substantial amount of sustainable agriculture and husbandry. The Golden Door's guiding philosophy emphasizes harmony with the environment. The Golden Door's guest experience and agricultural operations will be adversely impacted by nearby development of the Newland Sierra project that is the subject of the FOIA requests made by the Golden Door and to which Defendants have failed to respond.

6. Defendant Department of the Interior is a federal department that oversees USFWS and is responsible for the management and conservation of most federal lands. DOI is headquartered at 1849 C Street, NW, Washington D.C., 20240. DOI is an "agency" within the meaning of 5 U.S.C. § 552(f)(1) and has implementing regulations at 43 C.F.R. part 2 which require the DOI to comply with the nondiscretionary statutory and regulatory requirements of FOIA.

7. Defendant David L. Bernhardt is sued in his official capacity as the Acting Secretary of the Interior. Acting Secretary Bernhardt is the federal official ultimately responsible for ensuring that the DOI complies with its obligations under FOIA.

8. Defendant United States Fish and Wildlife Service is a federal agency within DOI that manages and conserves fish, wildlife, and natural habitats. USFWS is headquartered at 1849 C Street, NW, Washington, D.C., 20240. USFWS is an "agency" within the meaning of 5 U.S.C. § 552(f)(1) and therefore must comply with the nondiscretionary statutory requirements of FOIA.

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9. Defendant James Kurth is sued in his official capacity as the Acting Director of USFWS. Acting Director Kurth is the federal official ultimately responsible for ensuring that the USFWS complies with its obligations under FOIA.

### STATUTORY AND REGULATORY FRAMEWORK

10. FOIA promotes transparency and open government by providing every person with a right to request and receive federal agency records. 5 U.S.C. § 552(a)(3)(A).

11. In furtherance of its purpose to encourage open government, FOIA imposes strict deadlines on agencies to provide responsive documents to FOIA requests. 5 U.S.C. § 552(a)(6)(A).

12. DOI has specific regulations that implement and mirror the requirements of FOIA within DOI and the agencies it oversees, including USFWS. 43 C.F.R. § 2.1 *et seq.*

13. An agency must comply with a FOIA request by issuing a determination within 20 business days after receipt of the request, including the date of receipt. *Id.* § 552(a)(6)(A)(i); 43 C.F.R. § 2.16(a).

14. An agency may be entitled to one extension of ten business days to respond to a request if it provides written notice to the requester explaining the “unusual circumstances” that warrant additional time along with a date on which a determination is expected to be dispatched. 5 U.S.C. § 552(a)(6)(B); 43 C.F.R. § 2.19(a).

15. Upon making its determination within the statutorily prescribed deadlines, an agency must immediately notify the requester of its determination whether to comply with a request, and the reasons for it, and of the right of such person to appeal an adverse determination. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.21(a).

16. The determination “must at least inform the requester of the

1 scope of the documents that the agency will produce, as well as the scope of the  
 2 documents that the agency plans to withhold under any FOIA exemptions.”  
 3 *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm’n*, 711 F.3d  
 4 180, 186 (D.C. Cir. 2013).

5 17. An agency must give the requester the opportunity to limit the  
 6 scope of the request or agree to an alternative time period for processing if the  
 7 processing time will extend beyond a total of 30 workdays. 43 C.F.R. § 2.19(b);  
 8 *see also* 5 U.S.C. § 552(a)(6)(B)(ii).

9 18. An agency’s failure to comply with timing requirements as to  
 10 its initial determination is deemed a constructive denial and satisfies the requester’s  
 11 requirement to exhaust administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

12 19. A FOIA requester who exhausts administrative remedies may  
 13 petition the court for injunctive and declaratory relief from the agency’s continued  
 14 withholding of public records. *Id.* § 552(a)(4)(B).

15 20. A plaintiff may seek expedited consideration of an action, if  
 16 “good cause” is shown. 28 U.S. § 1657.

17 21. For the purposes of expedited consideration, “‘good cause’ is  
 18 shown if a right under . . . section 552 of title 5 . . . would be maintained in a  
 19 factual context that indicates that a request for expedited consideration has merit.”  
 20 28 U.S. § 1657.

## 21 **FACTS**

22 22. The general subject of the Golden Door’s FOIA request, the  
 23 Newland Sierra project, is a proposed residential development that would place  
 24 over 2,100 homes in a mostly undeveloped, open-space area that is currently zoned  
 25 by San Diego County’s General Plan for roughly 99 homes and that is designated  
 26 by the State of California as a Very High Fire Hazard Severity Zone. The  
 27 Newland Sierra project would be located directly across a two-lane road from the  
 28 Golden Door.

23. Notably, the Newland project was the subject of recent press in the San Diego Union Tribune, specifically an article entitled “*Federal regulators in San Diego muted after Newland Sierra developer lobbies D.C. power players,*” published on or about August 26, 2018. The media reported, “Attitudes in Sacramento about the Newland Sierra project seemed to shift after lobbyists made a trip to Washington D.C. sometime on or around March 30, 2017.” Accordingly, Plaintiffs seeks information regarding these interactions, pursuant to FOIA’s interest “‘to open agency action to the light of public scrutiny,’ to inform the citizenry ‘about what their government is up to.’” *Rosenfeld v. U.S. Dep’t of Justice*, 57 F.3d 803, 811 (9th Cir. 1995).

24. The Golden Door, through counsel, sent FOIA requests to each of the DOI’s Office of the Secretary in Washington, D.C., USFWS Headquarters (“FWSHQ”) in Washington, D.C., and the USFWS Pacific Southwest Region Headquarters in Sacramento, California (“Pacific Southwest Region”).

#### *DOI Request*

25. On June 22, 2018, the Golden Door sent one request to DOI’s Office of the Secretary in Washington, D.C. The request sought records dated from January 1, 2016, to the present, related to the Newland Sierra project. Specifically, the Golden Door requested communications related to the Newland Sierra project between USFWS and/or DOI employees and, for example, any individual with an email address including “@newlandco.com,” “@jwhalen.net” and “@mail.house.gov”. Takahashi Decl., Exhibit A at 6–8.

26. On July 18, 2018, the Golden Door received a letter from DOI notifying the Golden Door that the Office of the Secretary received the June 22, 2018 FOIA request directed to its office and had assigned control number OS-2018-01329. The letter did not make a determination regarding compliance with the request. The letter invoked the ten-business day extension under “unusual circumstances.” Takahashi Decl., ¶ 11.

27. The statutory and regulatory extended deadline to respond to a FOIA request with a determination under “unusual circumstances” expired by or before August 2, 2018. *See* Takahashi Decl., ¶ 11.

28. On August 15, 2018, after receiving no determination or responsive documents from DOI, the Golden Door counsel sent DOI an inquiry into the status of the FOIA request to DOI. Takahashi Decl., ¶ 12.

29. On August 22, 2018, DOI replied to Golden Door counsel that DOI staff was “still waiting on the program offices to send us all potentially responsive records for the request” and that they “cannot provide [] a timeline at this point[.]” Takahashi Decl., ¶ 13.

30. To date, DOI, has not made any determination nor disclosed any responsive documents or information in response to the Golden Door’s June 22, 2018 request. DOI has also not notified Golden Door counsel in writing the date on which a determination is expected to be dispatched. Takahashi Decl., ¶ 15.

31. DOI has therefore constructively denied the request by failing to comply with the applicable statutory or regulatory deadlines.

#### *USFWS Request*

32. On June 22, 2018, the Golden Door sent two separate FOIA requests to the FWSHQ and the Pacific Southwest Region. The requests sought records dated from January 1, 2016, to the present, related to the Newland Sierra project. Specifically, the Golden Door requested communications related to the Newland Sierra project between USFWS and/or DOI employees and, for example, any individual with an email address including “@newlandco.com,” “@jwhalen.net” and “@mail.house.gov”. Takahashi Decl., Exhibit A at 9–14.

33. On June 29, 2018, Golden Door counsel received an email from FWHQ’s FOIA office in response to the request directed at the Pacific Southwest Region, stating that it “received your request dated June 22, 2018. We have forwarded your request to our Region 8 Office for processing. You will receive



1 formal acknowledgement shortly.” This receipt contained no determination or  
2 information responsive to the FOIA requests. Takahashi Decl., ¶ 3.

3           34. The statutory and regulatory deadline to respond to a FOIA  
4 request of 20 business days expired on or about July 23, 2018. *See* Takahashi  
5 Decl., ¶ 3.

6           35. On August 15, 2018, after receiving no formal  
7 acknowledgement from USFWS related to either of its FOIA requests, the Golden  
8 Door sent USFWS an inquiry into the status of the FOIA requests. *See* Takahashi  
9 Decl., ¶ 4.

10           36. On August 16, 2018, FWSHQ forwarded the status inquiry to  
11 John DeClerck, the Pacific Southwest Region FOIA Coordinator. *See* Takahashi  
12 Decl., ¶ 5.

13           37. On August 27, 2018, the Pacific Southwest Region FOIA  
14 Coordinator sent the Golden Door an acknowledgment regarding the FOIA request  
15 directed at the Pacific Southwest Region, but no acknowledgement or response to  
16 the FOIA request directed at FWSHQ. Takahashi Decl., ¶ 6. The August 27  
17 acknowledgement letter for the Pacific Southwest Region FOIA request did not  
18 include a determination regarding whether to comply or a date on which a  
19 determination is expected to be dispatched. *See id.*

20           38. On September 4, 2018, Golden Door counsel sent another  
21 written inquiry to FWSHQ, specifically explaining the distinction between the two  
22 June 22, 2018 requests and requesting the status as to the request directed at  
23 FWSHQ. Takahashi Decl., ¶ 7. As of the date of filing this complaint, the Golden  
24 Door has still not received a substantive response (i.e., a determination on the  
25 request or disclosure of responsive information or documents) to this latest, third  
26 request for a status from FWSHQ. *See id.* ¶¶ 8, 10.

27           39. Also on September 4, 2018, Mr. DeClerck informed Golden  
28 Door counsel shortly thereafter that the Pacific Southwest Region FOIA



Coordinator is “only handling the Sacramento portion and [FWSHQ] will provide you with another FOIA tracking number outside of my [the Pacific Southwest Region FOIA Coordinator’s] number.” Takahashi Decl., ¶ 7. Mr. DeClerck did not provide the Golden Door with a determination as to its request directed toward FWSHQ or a date on which a determination is expected to be dispatched. *Id.*

40. On November 5, 2018, the Pacific Southwest Region FOIA coordinator emailed Plaintiff’s counsel explaining that he was “still hunting this [the request to FWSHQ] down” but that “no one can find any info on this one.” Takahashi Decl., ¶ 8.

41. More than three months after the expiration of the statutory time deadlines provided for in 5 U.S.C. § 552(a)(6)(A)(i) and 43 C.F.R. §§ 2.15, 2.19, and despite the Golden Door’s efforts to communicate with Defendants, FWSHQ has never formally acknowledged (including the provision of a tracking number) the Golden Door’s FOIA request to FWSHQ. *See* Takahashi Decl., ¶¶ 3–10.

42. Defendants have therefore failed to provide any determinations as to the FOIA request to FWSHQ within the statutorily prescribed timeframe and have constructively denied the requests.

#### *Exhaustion of Administrative Remedies*

43. As of the date of this complaint, Defendants have failed to (a) notify the Golden Door of any determination regarding their respective FOIA requests, including the scope of any responsive records Defendants intend to produce or withhold and the reasons for any withholdings; (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production; or (c) notify the Golden Door in writing of any dates on which any determinations are expected to be dispatched.

44. Through Defendant’s failure to respond to the Golden Door’s respective FOIA requests within the time period required by law, the Golden Door

1 has constructively exhausted its administrative remedies under 5 U.S.C.  
 2 552(a)(6)(C)(i) and seeks immediate judicial review.

3 *Immediate Need for Documents*

4 45. Under 5 U.S.C. § 552, the Golden Door has a legal right to the  
 5 requested records. Defendants have improperly withheld those records, forcing the  
 6 Golden Door to file suit to enforce its rights under FOIA.

7 46. The Newland Sierra project was approved by the County of San  
 8 Diego Board of Supervisors on or about September 26, 2018. The Golden Door  
 9 has challenged those approvals in the Superior Court of the State of California and  
 10 intends to monitor, review, and potentially challenge the project's federal  
 11 approvals. As a party that is interested in safeguarding the environment from  
 12 unnecessary, unplanned, and destructive development, the Golden Door has a  
 13 compelling and immediate need for the information requested.

14 **STATEMENT OF CLAIMS**

15 **First Claim**

16 **Failure to Make a Determination Within Statutorily Prescribed Timeframe**

17 47. Plaintiff re-alleges and incorporates the foregoing paragraphs as  
 18 if set forth in full.

19 48. Defendants failed to properly respond to the Golden Door's  
 20 June 22, 2018 FOIA requests within the statutorily mandated timeframe, in  
 21 violation of FOIA and DOI regulations, including but not limited to 5 U.S.C. §§  
 22 552(a)(6)(A), (6)(B) and 43 C.F.R. § 2.16.

23 49. Plaintiffs are entitled to their reasonable attorneys' fees and  
 24 costs under 5 U.S.C. § 552(a)(4)(E).

25 **Second Claim**

26 **Failure to Produce Responsive Records**

27 50. Plaintiff re-alleges and incorporates the foregoing paragraphs as  
 28 if set forth in full.



1 F. Award Plaintiff's attorneys' fees and costs.

2  
3 DATED: January 28, 2019

Respectfully submitted,

4 LATHAM & WATKINS, LLP

5 By: /s/ Taiga Takahashi  
6 Taiga Takahashi

7 Attorneys for Plaintiff Golden Door  
8 Properties